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July 16, 1996

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JUL 17 1996

FCC MAIL ROOM

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference
for InterLATA 0+ Calls, CC Docket No. 92-77

Dear Mr. Caton:

The New York State Department of Public Service (NYDPS) submits these comments in response to the Second Further Notice of Proposed Rulemaking (Notice) released on June 6, 1996. In the Notice, the Commission requests comment on a proposal to establish benchmark rates for "0+" calls from public telephones. Specifically, the Commission proposes benchmark rates that would be based on the weighted average of the highest operator services rates charged by AT&T, MCI, and Sprint, plus an additional 15%. Benchmark rates would be established for eight categories of calls.^{1/} Rates would vary based on such factors as time of day, distance and length of call.

The Commission also proposes oral disclosure rules for operator service providers (OSPs) whose rates exceed the benchmark. The rules would require that customers be informed of the total charges for which they would be liable prior to the call being connected, so that they could choose to hang up without being charged for the call. Alternatively, it seeks comment on requiring all OSPs to disclose their rates for 0+ calls.

^{1/} Those categories are person-to-person, customer dials; person-to-person, operator dials; calling card, customer dials; calling card, operator dials; operator station, collect, customer dials; operator station, collect, operator dials; operator station, third party, customer dials; and operator station, third party, operator dials.

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The NYDPS supports the dual proposal, first, to establish benchmark rates for 0+ calls and, second, to require oral disclosure of OSP rates that exceed the benchmark. We recommend, however, that the formula for determining appropriate benchmarks not include a markup in order to encourage lower rates to consumers. Until there is competition for 0+ calls, an OSP will have ample incentive and opportunity to charge the maximum rate allowed (under the Commission's proposal, 15% above the weighted average rate charged by AT&T, MCI, and Sprint), unless it is required to disclose its rates to consumers. Therefore, we believe that establishing benchmark rates with no allowance for an additional price margin will result in more reasonable 0+ rates for consumers.

Further, we recommend that benchmark rates be set at the highest rate charged by AT&T, MCI, or Sprint for each of the eight proposed categories, rather than a weighted average of the highest rates charged by those carriers.^{1/} This approach has two distinct advantages. First, it would be easier to administer, since the Commission would not have to calculate benchmark rates based on weighted averages. Second, it would harmonize with the Commission's position that AT&T, MCI and Sprint not be subject to oral disclosure requirements, even in the case where benchmark rates do not include an additional price margin. Gearing the benchmark to an average could result in some AT&T, MCI and Sprint rates being above the benchmark, thereby subjecting one or more of these companies to oral disclosure requirements. This would be unwise, as the Commission implies (paras. 3, 13, 23).

Suggesting that "tariffs have not always been adequate to ensure that the charges, surcharges and practices for domestic, interexchange operator services are just and reasonable" (para. 41), the Commission proposes to forbear from requiring OSPs to file interstate informational tariffs. The New York State Public Service Commission requires OSPs to file tariffs identifying their rates, charges, rules and regulations for intrastate operator-assisted communications services.^{2/} These requirements were developed in response to numerous

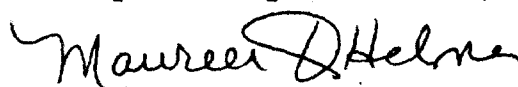
^{1/} NYDPS has promulgated rules that allow the tariffs of operator services providers to take effect unless the maximum rates charged by such providers exceed the highest rates authorized by the commission for a local exchange telephone corporation or a dominant interexchange telephone corporation in the state for similar kinds of operator assisted telephone calls.

^{2/} 16 NYCRR Part 649.

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customer complaints, and our regulations provide effective enforcement authority. Although the Commission may conclude that interstate informational tariffs are unnecessary, we find our tariff filing requirement provides a valuable tool for ensuring that consumers are adequately protected in the absence of the protection of competitive markets.

Respectfully submitted,



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CC Docket No. 92-77

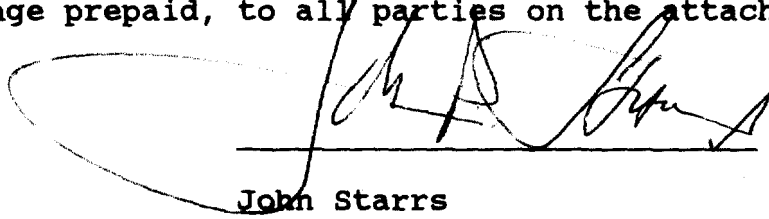
In the Matter of

Billed Party Preference for
InterLATA 0+ Calls

Comments of New York State
Department of Public Service

CERTIFICATE OF SERVICE

I, John Starrs, hereby certify that an original and nine copies of comments in the above-captioned proceeding were sent via Airborne Express to Mr. Caton, and by first class United States mail, postage prepaid, to all parties on the attached service list.

A large, stylized handwritten signature in black ink, appearing to read 'John Starrs', is written over a horizontal line.

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